

Amendment No. 2 to HB2139

**Fitzhugh
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2113

House Bill No. 2139*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 35-11-111, is amended by deleting the section in its entirety and by substituting instead the following:

35-11-111.

(a) It is an offense for any fundraising to occur for the purposes described in §§ 35-11-101 and 35-11-102 in violation of this chapter.

(b) It is an offense for trust funds raised for the purposes described in §§ 35-11-101 and 35-11-102 to be distributed in violation of this chapter.

(c) A violation of subsection (a) or (b) is a Class B misdemeanor.

SECTION 2. Tennessee Code Annotated, Section 35-11-101(a), is amended by deleting the last sentence of subsection (a) and by substituting instead the following:

The trustee of this trust shall be either an individual, or a bank or trust company.

Such funds placed with a bank or trust company shall be considered to be held in trust, and the bank or trust company considered a trustee, as such terms are used in this chapter, if the bank or trust company maintains such funds in its name as custodian for the benefit of the injured individual, and limits disbursements to those for which the funds are raised or which are permitted by § 35-11-103 and § 35-11-105.

SECTION 3. Tennessee Code Annotated, Section 35-11-102(a), is amended by deleting the words "trust company; provided," and by substituting instead the words

"trust company or shall establish a trust in the name of an individual, " _____

[name of beneficiary] trust, _____ trustee", or words to the same effect;

provided".

SECTION 4. Tennessee Code Annotated, Section 35-11-104(a), is amended by deleting the words “as trustee for”, and substituting the word “or”.

SECTION 5. Tennessee Code Annotated, Section 35-11-105(a), is amended by deleting the words “by the bank or trust company” and by substituting instead the words “by the trustee.”

SECTION 6. Tennessee Code Annotated, Section 35-11-102, is amended by adding the following as a new subsections (d) and (e);

(d) On the establishment of a trust for purposes regulated by this chapter, the trustee shall file written notice of the establishment of the trust on forms prescribed by the secretary of state with the division of charitable solicitation in the office of the secretary of state. No person or entity may solicit funds on behalf of an individual with a catastrophic illness that is subject to the provisions of this chapter prior to the filing of such notice with the division. For any trust regulated under the provisions of this chapter on the effective date of this act, such notice shall be filed on or before August 1, 2007.

(e) A trustee, other than a bank or trust company acting as trustee, shall file an accounting of the trust with the division of charitable solicitations on the anniversary each year of the establishment of the trust.

SECTION 7. Tennessee Code Annotated, Title 35, Chapter 11, is amended by adding the following as a new section:

In addition to any other penalty or remedy available under law, the secretary of state or the designee of the secretary may assess a civil penalty, pursuant to § 48-101-514, against any person or entity that violates a provision of this chapter. The person or entity against whom the penalty is assessed shall have appeal rights pursuant to § 48-101-514.

SECTION 8. Tennessee Code Annotated, Title 35, Chapter 11, is amended by adding the following as a new section:

The secretary of state or his designee shall have the right to inspect the records for trusts established under this part, subject to the provisions of Title 45, Chapter 10 and the Federal Right to Financial Privacy Act, Pub. L. 95-630, as amended, 12 U.S.C. Section 3401 et seq.

SECTION 9. Tennessee Code Annotated, Title 35, Chapter 11, is amended by adding the following as a new section:

The secretary of state or his designee shall have the right to issue subpoenas to obtain records relevant to a solicitation or a trust established under this part, subject to the provisions of Title 45, Chapter 10 and the Federal Right to Financial Privacy Act, Pub. L. 95-630, as amended, 12 U.S.C. Section 3401 et seq.

SECTION 10. Tennessee Code Annotated, Title 35, Chapter 11, is amended by adding the following as a new section:

The secretary of state may adopt rules and regulations to carry out the provisions of this chapter in accordance with the provisions of Tennessee Code Annotated, title 4, chapter 5.

SECTION 11. This act shall take effect July 1, 2007, the public welfare requiring it.